

**Introduced by Senator Simitian**

February 10, 2005

---

An act to ~~amend Section 11465.5 of the Welfare and Institutions Code, relating to public social services;~~ *add Section 638 to the Penal Code, relating to privacy.*

LEGISLATIVE COUNSEL'S DIGEST

SB 202, as amended, Simitian. ~~Long-term kinship care.~~ *Privacy: telephone calling pattern record or list.*

*Existing law prohibits a telephone or telegraph corporation, with certain exceptions, from making available to any other person or corporation, without first obtaining a residential subscriber's consent in writing, the subscriber's personal calling patterns, including any listing of the telephone or other access numbers called by the subscriber.*

*Existing law pertaining to the protection of privacy, makes it a crime, punishable by fine or imprisonment or both, with certain exceptions, to wiretap, eavesdrop, or otherwise intercept telephone or telegraph communications without authorization.*

*This bill would make it a crime, punishable by fine or imprisonment or both, to purchase, sell, offer to purchase or sell, or conspire to purchase or sell, any telephone calling pattern record or list, as specified, without the written consent of the person making the call and of each person called. Because a violation of the bill's provisions would be a crime, this bill would impose a state-mandated local program by creating new crimes.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.*

*Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

~~Existing law provides for the Aid to Families with Dependent Children-Foster Care (AFDC-FC) program, under which payments are made on behalf of low-income children placed in foster care, including certain qualified placements with relatives.~~

~~Existing law also provides for the California Work Opportunity and Responsibility to Kids (CalWORKs) program, under which each county provides cash assistance and other benefits to qualified low-income families. Payment rates under this program are lower than that provided for under the AFDC-FC program.~~

~~Existing law requires the State Department of Social Services, if federal approval is obtained, and if counties agree to participate, to establish 5-year pilot projects in specified counties and in any other county that submits a plan and secures approval of the department in accordance with certain criteria. The projects involve only specified dependents of the court who are placed with relatives and who are receiving federal AFDC-FC payments.~~

~~This bill would authorize any other county to elect to participate in conducting a pilot project without requiring that the county submit a plan and secure the approval of the department.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 638 is added to the Penal Code, to read:  
2     638. (a) Any person who purchases, sells, offers to purchase  
3     or sell, or conspires to purchase or sell any telephone calling  
4     pattern record or list, without the written consent of the person  
5     making the call and of each person called, shall be punished by a  
6     fine not exceeding two thousand five hundred dollars (\$2,500), or  
7     by imprisonment in the county jail not exceeding one year, or by  
8     imprisonment in the state prison, or by both a fine and  
9     imprisonment in the county jail or in the state prison. If the  
10    person has previously been convicted of a violation of this  
11    section, he or she is punishable by a fine not exceeding ten  
12    thousand dollars (\$10,000), or by imprisonment in the county jail

1 *not exceeding one year, or by imprisonment in the state prison,*  
2 *or by both a fine and imprisonment in the county jail or in the*  
3 *state prison.*

4 *(b) Any personal information contained in a telephone calling*  
5 *pattern record or list that is obtained in violation of this section*  
6 *shall be inadmissible as evidence in any judicial, administrative,*  
7 *legislative, or other proceeding except when that information is*  
8 *offered as proof in an action or prosecution for a violation of this*  
9 *section as proof in an action or prosecution for a violation of this*  
10 *section.*

11 *(c) For purposes of this section:*

12 *(1) "Person" includes an individual, business association,*  
13 *partnership, limited partnership, corporation, limited liability*  
14 *company, or other legal entity.*

15 *(2) "Telephone calling pattern record or list" includes any*  
16 *document or record of the telephone or other access numbers*  
17 *called by any person, or received by any person, whether the call*  
18 *was made from or to a telephone connected to the public*  
19 *switched telephone network, a cordless telephone, as defined in*  
20 *Section 632.6, a telephony device operating over the Internet*  
21 *utilizing voice over Internet protocol, a satellite telephone, or*  
22 *commercially available interconnected mobile phone service that*  
23 *provides access to the public switched telephone network via a*  
24 *mobile communication device employing radiowave technology*  
25 *to transmit calls, including cellular radiotelephone, broadband*  
26 *Personal Communications Services, and digital Specialized*  
27 *Mobile Radio.*

28 *SEC. 2. No reimbursement is required by this act pursuant to*  
29 *Section 6 of Article XIII B of the California Constitution because*  
30 *the only costs that may be incurred by a local agency or school*  
31 *district will be incurred because this act creates a new crime or*  
32 *infraction, eliminates a crime or infraction, or changes the*  
33 *penalty for a crime or infraction, within the meaning of Section*  
34 *17556 of the Government Code, or changes the definition of a*  
35 *crime within the meaning of Section 6 of Article XIII B of the*  
36 *California Constitution.*

1  
2  
3  
4  
5

**All matter omitted in this version of the bill  
appears in the bill as introduced in Senate,  
February 10, 2005(JR11)**

O